

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JASON BELKNAP FARMER,

Plaintiff,

v.

CITY OF SPOKANE, and RHIAN
WILKINSON,

Defendants.

NO: 2:15-CV-47-RMP

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM AND GRANTING
MOTION FOR JUDICIAL NOTICE

Before the Court is Defendants' Motion to Dismiss for Failure to State a

Claim and Motion for Judicial Notice, **ECF No. 8**. The Court has reviewed the

motions, all relevant filings, and is fully informed.

BACKGROUND

Plaintiff Jason B. Farmer asserts that in September 2013 that he found a lost dog in a Spokane Valley neighborhood. ECF No. 1 at 2. Mr. Farmer allegedly discovered an online posting requesting return of the dog, and contacted, via text message, the individuals who created that post indicating his possession of the

1 animal. ECF No. 1 at 2. After various failed attempts to return the dog, including
2 a dispute over whether or not Mr. Farmer should receive compensation for his care
3 of the animal, Mr. Farmer and the true owner, Ms. Amanda Watson, succeeded in
4 transferring possession of the dog on November 23, 2013. ECF No. 1 at 2-4, ECF
5 No. 8 at 3. Shortly thereafter, Spokane Police Officer Rhian Wilkinson arrested
6 Mr. Farmer. ECF No. 1 at 4, ECF No. 8 at 3. Mr. Farmer alleges that Officer
7 Wilkinson arrested him on suspicion of extortion and theft. ECF No. 1 at 4.

8 At the time of Mr. Farmer's arrest, there was an outstanding bench warrant
9 for his arrest on Third Degree Driving With License Suspended ("DWLS"). ECF
10 No. 9 at 2. Once in custody, Mr. Farmer pleaded guilty to DWLS and was
11 sentenced to ten days imprisonment, from November 23, 2013, to December 3,
12 2013. ECF No. 9 at 7. Mr. Farmer was held at the Spokane County Jail from
13 December 3, 2013, to December 24, 2013, until he posted bond. ECF No. 1 at 4.

14 Mr. Farmer alleges three causes of action against Defendants: (1) that
15 Officer Wilkinson's arrest of him was unlawful; (2) that the City of Spokane is
16 liable for the unlawful arrest under the doctrine of respondeat superior; and (3) that
17 Officer Wilkinson committed the tort of false imprisonment when he unlawfully
18 arrested and imprisoned Mr. Farmer. ECF No. 1. The unlawful arrest claim is
19 brought pursuant to 42 U.S.C. § 1983 and false imprisonment is a supplemental
20 claim under Washington state law. ECF No. 1.

1 Defendants move to dismiss the complaint on several bases: (1) that Mr.
2 Farmer has failed to state a claim of unlawful arrest upon which relief may be
3 granted because Officer Wilkinson had probable cause to arrest him; (2) that
4 Officer Wilkinson is entitled to qualified immunity because he had probable cause
5 to arrest; (3) that *Heck v. Humphrey* bars Mr. Farmer's claim of unlawful arrest;
6 (4) that the City of Spokane cannot be held liable under a theory of respondeat
7 superior because a municipality has no respondeat superior liability under § 1983;
8 (5) that Mr. Farmer has failed to state a claim of false imprisonment because he
9 was lawfully imprisoned on another charge; and (6) that *Heck v. Humphrey* bars
10 Mr. Farmer's claim of false imprisonment.

11 DISCUSSION

12 A. Standard of Review

13 A defendant must file a Rule 12(b)(6) motion to dismiss for failure to state a
14 claim before filing a responsive pleading. *Elvig v. Calvin Presbyterian Church*,
15 375 F.3d 951, 954 (9th Cir. 2004). When a party has answered the complaint prior
16 to filing a motion to dismiss, the court construes the motion as a motion for
17 judgment on the pleadings under Federal Rule of Civil Procedure 12(c). *Aldabe v.*
18 *Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980).

19 In reviewing a defendant's motion under Rule 12(c), the district court views
20 the facts as presented in the pleadings in the light most favorable to the plaintiff,

1 accepting as true all the allegations in their complaint and treating as false those
2 allegations in the answer that contradict the plaintiff's allegations. *Hoeft v. Tucson*
3 *Unified Sch. Dist.*, 967 F.2d 1298, 1301, n.2 (9th Cir. 1992); *accord Hal Roach*
4 *Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989).
5 Additionally, the court views plain errors within the complaint in the light most
6 favorable to the plaintiff as “[p]leadings must be construed so as to do justice.”
7 Fed. R. Civ. P. 8(e).

8 Judgment on the pleadings is proper when there is no issue of material fact
9 in dispute, and the moving party is entitled to judgment as a matter of law.
10 *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). “Analysis under Rule
11 12(c) is ‘substantially identical’ to analysis under Rule 12(b)(6) because, under
12 both rules, ‘a court must determine whether the facts alleged in the complaint,
13 taken as true, entitle the plaintiff to a legal remedy.’” *Chavez v. United States*, 683
14 F.3d 1102, 1108 (9th Cir. 2012) (quoting *Brooks v. Dunlop Mfg. Inc.*, No. C 10-
15 04341 CRB, 2011 WL 6140912, at *3 (N.D. Cal. Dec. 9, 2011)). Thus, “a court
16 must assess whether a complaint ‘contain[s] sufficient factual matter, accepted as
17 true, to state a claim to relief that is plausible on its face.’” *Id.* (quoting *Ashcroft v.*
18 *Iqbal*, 556 U.S. 662, 678 (2009)).

19 Defendants moved to dismiss the complaint after they filed an answer. *See*
20 *generally* ECF Nos. 3 and 8. The Court therefore construes the motion as a motion

1 for judgment on the pleadings. The Court will accept as true all allegations in Mr.
2 Farmer's complaint, ECF No. 1, and assume as false those allegations in the
3 answer, ECF No. 3, that contradict Mr. Farmer's allegations. Additionally, since
4 the Court is treating the motion as a motion for judgment on the pleadings and not
5 a motion for summary judgment, the Court may not consider any extrinsic
6 evidence provided by the parties.

7 **B. Judicial Notice**

8 Defendants move this Court to take judicial notice of the following certified
9 exhibits attached to their motion: a bench warrant issued on November 6, 2013,
10 for Mr. Farmer's arrest; a Spokane County Municipal Court Judgment and
11 Sentencing Order dated December 3, 2013; and a Statement of Defendant on Plea
12 of Guilty dated December 3, 2013. ECF No. 9.

13 Rule 12(d) provides:

14 If, on a motion under Rule 12(b)(6) or 12(c), matters outside the
15 pleadings are presented to and not excluded by the court, the motion
16 must be treated as one for summary judgment under Rule 56. All
material that is pertinent to the motion.

17 Fed. R. Civ. P. 12(d). However, the Ninth Circuit has recognized two exceptions
18 to the rule precluding a court from considering evidence outside the pleadings on a
19 Rule 12(b)(6) motion to dismiss or a Rule 12(c) motion for judgment on the
20 pleadings. The first exception to the rule permits a court to "consider material

1 which is properly submitted as part of the complaint on a motion to dismiss
2 without converting the motion to dismiss into a motion for summary judgment.”
3 *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001) (internal quotation marks and
4 citation omitted). “If the documents are not physically attached to the complaint,
5 they may be considered if the documents’ authenticity . . . is not contested and the
6 plaintiff’s complaint necessarily relies on them.” *Id.* (internal citation omitted).
7 The second exception permits “a court [to] take judicial notice of matters of public
8 record.” *Id.* (internal citation omitted).

9 Mr. Farmer makes no mention in his complaint of the documents of which
10 Defendants move the Court to take judicial notice. Therefore, the first exception to
11 Rule 12(d) does not apply here. However, all three documents are matters of
12 public record. Accordingly, the Court properly may take judicial notice of the
13 bench warrant, the Judgment and Sentence Order, and the Statement of Plea.
14 Defendants’ motion for judicial notice is granted.

15 C. Judgment on the Pleadings

16 1. *Unlawful Arrest*

17 a. Failure to State a Claim

18 Mr. Farmer argues that his arrest for extortion and theft was unlawful
19 because no reasonable officer would have believed there was probable cause to
20 arrest him for extortion or theft based on the facts and circumstances known at the

1 time. ECF No. 1 at 4. Defendants argue that Officer Wilkinson had probable
2 cause to arrest Mr. Farmer. ECF No. 3 at 4, 6.

3 To successfully bring a claim under 42 U.S.C. § 1983, a plaintiff must
4 “allege the violation of a right secured by the Constitution and laws of the United
5 States, and must show that the alleged deprivation was committed by a person
6 acting under color of state law.” *W. v. Atkins*, 487 U.S. 42, 48 (1988). An arrest
7 does not violate the Fourth Amendment if probable cause exists as “defined in
8 terms of facts and circumstances ‘sufficient to warrant a prudent man in believing
9 that the (suspect) had committed or was committing an offense.’” *Gerstein v.*
10 *Pugh*, 420 U.S. 103, 111-12 (1975) (quoting *Beck v. Ohio*, 379 U.S. 89, 91
11 (1964)). Whether probable cause exists depends upon the reasonable conclusion
12 drawn from the facts known to the arresting officer at the time of the arrest.
13 *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (quoting *Maryland v. Pringle*, 540
14 U.S. 366, 371 (2003)).

15 In *Devenpeck*, a defendant was pulled over by Washington state troopers
16 who had reason to suspect that he was impersonating a police officer by using
17 flashing headlights. *Devenpeck*, 543 U.S. at 148-49. During the stop, the officers
18 noticed the defendant was recording their encounter. *Devenpeck*, 543 U.S. at 149.
19 The officers arrested the defendant for making an unlawful recording in violation
20 of Washington’s Privacy Act and issued a citation for his flashing headlights.

1 *Devenpeck*, 543 U.S. at 150-51. Eventually, the state dismissed all charges
2 because the officer was mistaken that recording the police violated Washington
3 law. *Devenpeck*, 543 U.S. at 151.

4 The defendant filed a § 1983 action against the arresting officers for
5 unlawful arrest and false imprisonment, alleging the officers arrested him without
6 probable cause. *Id.* The Supreme Court concluded that although the stated reason
7 for arresting the defendant was violation of the Privacy Act, his arrest did not
8 violate the Fourth Amendment because the officers also were aware of facts
9 providing them probable cause to arrest him for impersonating a police officer. *Id.*
10 at 152–55 (citing *Whren v. United States*, 517 U.S. 806, 812–13 (1996)).

11 Defendants argue that Officer Wilkinson had probable cause to arrest Mr.
12 Farmer because there was an outstanding arrest warrant for Mr. Farmer for DWLS.
13 ECF No. 3 at 7. However, unlike the officers in *Devenpeck* who were aware of
14 two reasons to arrest the defendant but only articulated one reason when arresting
15 him, there is no evidence in the record that Officer Wilkinson personally was
16 aware of the existence of the outstanding warrant for DWLS when he arrested Mr.
17 Farmer. Viewing the facts in the light most favorable to Mr. Farmer, the
18 outstanding warrant for DWLS did not provide Officer Wilkinson with probable
19 cause to arrest Mr. Farmer, because there is nothing in the record before the Court
20 of Officer Wilkinson’s knowledge of the warrant.

1 Defendants also allege in their Answer that Officer Wilkinson had seen
2 several text messages that Mr. Farmer allegedly sent to the dog owners, attempting
3 to extort them. ECF No. 3 at 3. However, the Court may not consider these
4 allegations on a Motion for Judgment on the Pleadings because they are not
5 supported by Mr. Farmer's allegations in the complaint. *Hoeft v. Tucson Unified*
6 *Sch. Dist.*, 967 F.2d 1298, 1301, n.2 (9th Cir. 1992). There is no evidence in the
7 record that the Court may properly consider on a motion for judgment on the
8 pleadings that Officer Wilkinson was personally aware of facts sufficient to
9 constitute probable cause to arrest Mr. Farmer for extortion and theft. Therefore,
10 Defendants have failed to show that Officer Wilkinson had personal knowledge of
11 facts sufficient to constitute probable cause to arrest Mr. Farmer.

12 The Court infers that Defendants may be relying on the collective
13 knowledge doctrine for their assertion that the existing DWLS warrant provided
14 probable cause for Officer Wilkinson to arrest Mr. Farmer. The collective
15 knowledge doctrine "allows courts to impute police officers' collective knowledge
16 to the officer conducting a stop, search, or arrest." *United States v. Villasenor*, 608
17 F.3d 467, 475 (9th Cir. 2010). It generally applies in two situations, both of which
18 require officers working in tandem and sharing information. The first situation is
19 "where law enforcement agents are working together in an investigation but have
20 not explicitly communicated the facts each has independently learned."

1 *Villasenor*, 608 F.3d at 475 (quoting *United States v. Ramirez*, 473 F.3d 1026,
2 1032 (9th Cir. 2007)). The second situation is “where an officer with direct
3 personal knowledge of all the facts necessary to give rise to reasonable suspicion
4 directs or requests that another officer conduct a stop, search or arrest.” *Id.* at 475.
5 If either scenario is present, the court may impute one officer’s knowledge
6 constituting probable cause to another officer who conducted the arrest.

7 There is no evidence in the record that Officer Wilkinson was either directed
8 to arrest Mr. Farmer by another officer with knowledge sufficient to constitute
9 probable cause, or that Officer Wilkinson was part of an investigative team which
10 together had knowledge of and communicated the necessary facts supporting
11 probable cause. Therefore, the collective knowledge doctrine does not apply.

12 Viewing the facts in the light most favorable to Mr. Farmer, the Court finds
13 that there is a genuine issue of material fact regarding whether Officer Wilkinson
14 had probable cause to arrest Mr. Farmer. On the face of the complaint, Mr. Farmer
15 has stated a claim upon which relief may be granted.

16 b. Qualified Immunity

17 Defendants contend that Officer Wilkinson is entitled to qualified immunity
18 because he had probable cause to arrest Mr. Farmer and therefore acted within the
19 law. ECF No. 3 at 4, 6.

Qualified immunity protects a police officer whose “conduct does not violate clearly established . . . constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 817–18 (1982). The question of qualified immunity should be resolved in the defendant’s favor if the plaintiff fails to allege the violation of a clearly established constitutional right. *Siegrist v. Gilley*, 500 U.S. 226, 232–33 (1991). For a constitutional right to be established so that qualified immunity does not apply, “[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

Having determined that there is a genuine issue of material fact regarding whether Officer Wilkinson had probable cause to arrest Mr. Farmer, the Court finds that there is no basis on which to grant Officer Wilkinson qualified immunity from this suit on the current record.

c. *Heck v. Humphrey*

Defendants move to dismiss Mr. Farmer’s § 1983 unlawful arrest claim under *Heck v. Humphrey*, 512 U.S. 477 (1994), which held that a plaintiff may not bring a federal civil rights claim if a finding in his favor on that claim would necessarily imply the invalidity of his criminal sentence. The Supreme Court stated:

[I]n order to recover damages for allegedly unconstitutional convictions or imprisonment, or for other harm caused by actions whose

1 unlawfulness would render a conviction or sentence invalid, a §1983
2 plaintiff must prove that the conviction or sentence has been reversed
3 on direct appeal, expunged by executive order, declared invalid by a
state tribunal authorized to make such determination, or called into
question by a federal court's issuance of a writ of habeas corpus.

4 *Heck*, 512 U.S. at 486-87.

5 In *Heck*, the Supreme Court effectively created a rule of abstention. If the
6 court determines that “the plaintiff’s action, even if successful, will *not*
7 demonstrate the invalidity of any outstanding criminal judgment against the
8 plaintiff, the action should be allowed to proceed, in the absence of some other bar
9 to the suit.” *Heck*, 512 U.S. at 487 (emphasis in original). Thus, the Court must
10 determine whether judgment in favor of Mr. Farmer would imply that his
11 conviction for DWLS or resulting sentence is invalid.

12 Viewing the facts in the light most favorable to Mr. Farmer, the Court
13 presumes that Mr. Farmer was arrested for extortion and theft. There is no
14 evidence in the record properly before the Court showing that Officer Wilkinson
15 arrested Mr. Farmer for DWLS or that Officer Wilkinson was even aware of the
16 existence of the outstanding bench warrant for DWLS. Although the evidence
17 shows that Mr. Farmer eventually pleaded guilty and was sentenced to DWLS,
18 Officer Wilkinson may have discovered the existence of the outstanding bench
19 warrant, and thus the basis for probable cause to arrest Mr. Farmer for DWLS,

1 sometime after arresting him for extortion and theft. The timeline of these events
2 is unclear.

3 At this time, with the information available to this Court, the Court finds that
4 *Heck* does not bar Mr. Farmer's unlawful arrest claim. It is not clear that a finding
5 in Mr. Farmer's favor would render invalid his sentence or conviction for DWLS.

6 On the face of the pleadings, it appears that Mr. Farmer has stated a valid
7 claim to relief and that there are genuine issues of material fact yet to be resolved.
8 Therefore, Defendants are not entitled to judgment as a matter of law on Mr.
9 Farmer's claim of unlawful arrest.

10 2. *Respondeat Superior*

11 Mr. Farmer claims that Spokane is liable for Officer Wilkinson's actions
12 under the doctrine of respondeat superior.

13 Municipalities are "persons" subject to suit under § 1983, *Monell v. N.Y.C.*
14 *Dept. of Soc. Serv's*, 436 U.S. 658, 690 (1978), but neither municipalities nor
15 individuals may be subject to liability under § 1983 based on respondeat superior.
16 *Iqbal*, 556 U.S. at 676 ("Government officials may not be held liable for the
17 unconstitutional conduct of their subordinates under a theory of respondeat
18 superior."); *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979) ("[V]icarious
19 liability may not be imposed on a state or municipal official for acts of lower
20 officials in the absence of a state law imposing such liability."). Mr. Farmer has

1 cited no Washington statute creating an exception to this rule. *See generally* ECF
2 No. 1 at 4. Regardless, “liability may attach if an employee commits an alleged
3 constitutional violation pursuant to a formal governmental policy or a longstanding
4 practice or custom which constitutes the standard operating procedure.” *Hervey v.*
5 *Estes*, 65 F.3d 784, 791 (9th Cir. 1995) (internal quotation marks omitted).

6 Respondeat superior is not a cognizable legal theory against Spokane absent
7 an allegation that Officer Wilkinson acted in compliance with a formal policy,
8 practice, or custom. Mr. Farmer has not pleaded that Officer Wilkinson’s actions
9 were taken in accordance with an official policy or practice. *See generally* ECF
10 No. 1. Therefore, Mr. Farmer has failed to plead sufficient facts forming a facially
11 plausible claim under §1983 against Spokane. Mr. Farmer’s allegations against the
12 City of Spokane fail to state a claim upon which relief may be granted and
13 therefore are dismissed.

14 3. *False Imprisonment*

15 a. Supplemental Jurisdiction

16 A federal district court shall have supplemental jurisdiction over all other
17 claims that are part of the same case or controversy as the claims over which the
18 court has original jurisdiction. 28 U.S.C. § 1337(a). If a state law claim arises out
19 of a “common nucleus of operative fact,” the court may exercise supplemental
20 jurisdiction over that state law claim. *United Mine Workers v. Gibbs*, 383 U.S. 715

1 (1966). When determining whether to exercise supplemental jurisdiction, a court
2 should consider the “concerns of judicial economy, convenience, fairness, and
3 comity.” If a district court declines to exercise supplemental jurisdiction, it must
4 explain how declining jurisdiction serves these concerns. *Smith v. K-Mart Corp.*,
5 899 F. Supp. 503, 505 (E.D. Wash. 1995).

6 All of Mr. Farmer’s claims arise out of a “common nucleus of operative
7 fact.” Therefore, this Court may exercise supplemental jurisdiction over his state
8 law claim of false imprisonment. *United Mine Workers*, 383 U.S. at 725.

9 b. *Heck v. Humphrey*

10 Defendants argue that *Heck v. Humphrey* bars Mr. Farmer’s false
11 imprisonment claim because a finding in his favor would necessarily imply the
12 invalidity of his DWLS sentence.

13 Mr. Farmer seeks redress for the twenty-one days he was imprisoned in
14 Spokane County Jail. ECF No. 1 at 4. Although evidence in the record shows the
15 existence of an outstanding warrant for DWLS at the time of Mr. Farmer’s arrest,
16 Defendants have failed to provide any evidence that Officer Wilkinson was aware
17 of the existence of this warrant when he arrested Mr. Farmer. Evidence in the
18 record also shows that Mr. Farmer eventually pleaded guilty to DWLS, and at
19 some unknown time, was charged with extortion and theft. However, the timeline
20 of these events is unclear.

1 At this time, with the information available to this Court, the Court finds that
2 *Heck* does not bar Mr. Farmer's false imprisonment claim. It is not clear that a
3 finding in Mr. Farmer's favor would render invalid his sentence, conviction, or
4 imprisonment for DWLS.

5 c. Failure to State a Claim

6 Mr. Farmer alleges that Officer Wilkinson is responsible for Mr. Farmer's
7 false imprisonment in Spokane County Jail.

8 To bring a claim of false imprisonment, the plaintiff must "show that the
9 defendant intentionally confined him without justification." *Dunn v. Hyra*, 676 F.
10 Supp. 2d 1172, 1195 (W.D. Wash. 2009). Generally, in Washington, a defendant
11 law enforcement officer may raise "probable cause [as] a complete defense to an
12 action for false arrest [or] false imprisonment." *McBride v. Walla Walla County*,
13 95 Wn. App. 33 (1999).

14 However, lawful arrest does not eliminate consideration of the
15 circumstances surrounding the subsequent imprisonment to determine whether it
16 was unlawful. *Stalter v. State*, 113 Wn. App. 1, 15 (2002) *aff'd in part, rev'd in*
17 *part on other grounds*, 151 Wn. 2d 148 (2004). In Washington, if an arrestee is
18 detained in jail "for more than a reasonable time, the detaining [agency] is liable in
19 an action for damages." *Kellogg v. State*, 94 Wn. 2d 851, 854 (1980) (quoting
20 *Housman v. Byrne*, 9 Wn. 2d 560, 561 (1941)). Finally, the filing of criminal

1 charges is “a superseding intervening cause that would limit any liability for . . .
2 false imprisonment to damages accruing before criminal charges were filed by a
3 fully informed prosecutor.” *Youker v. Douglas Cnty.*, 162 Wn. App. 448, 467
4 (2011). Timely filed charges eliminate the basis for a plaintiff’s argument of false
5 imprisonment. *See Youker*, 162 Wn. App. at 466.

6 Mr. Farmer’s claim for false imprisonment is based on his arrest and
7 subsequent imprisonment for extortion and theft. Mr. Farmer was held from
8 December 3, 2013, to December 24, 2013. *See ECF No. 1 at 4*. Charging Mr.
9 Farmer with extortion and theft would constitute an intervening event that limits
10 any liability to only those potential damages accruing prior to the charging event.
11 *See Youker*, 162 Wn. App. at 467. However, the record is unclear as to when Mr.
12 Farmer was charged with extortion and theft.

13 Therefore, viewing the facts in the light most favorable to Mr. Farmer, there
14 is no intervening event that cuts off liability. Mr. Farmer has pleaded a claim for
15 false imprisonment that may entitle him to relief. Officer Wilkinson has failed to
16 establish on the face of the pleadings that no material issue of fact remains to be
17 resolved and that he is entitled to judgment as a matter of law.

18 Accordingly, **IT IS HEREBY ORDERED** that Defendants’ Motion for
19 Failure to State a Claim and Motion for Judicial Notice, **ECF No. 8**, is
20 **GRANTED IN PART AND DENIED IN PART**. The City of Spokane is

1 **DISMISSED with prejudice.** The District Court Clerk is directed to enter this
2 Order and provide copies to counsel.

3 **DATED** this 30th day of July, 2015.

4 _____
5 *s/Rosanna Malouf Peterson*
ROSANNA MALOUF PETERSON
Chief United States District Court Judge

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